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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|---------------------------|---------------------|------------------|
| 10/788,799   | 02/27/2004  | Gerald Nelson             | 15420.49.1          | 7858             |
| 7590 01/25/2008  |             |                           |                     |                  |
| David B. Dellenbach<br>WORKMAN NYDEGGER<br>1000 EAGLE GATE TOWER<br>60 EAST SOUTH TEMPLE<br>SALT LAKE CITY, UT 84111 |             | EXAMINER<br>NGUYEN, TAM M |                     |                  |
|  |             | ART UNIT PAPER NUMBER     |                     |                  |
|  |             | 3764                      |                     |                  |
|  |             | MAIL DATE DELIVERY MODE   |                     |                  |
|  |             | 01/25/2008 PAPER          |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/788,799

Applicant(s)

NELSON ET AL.

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

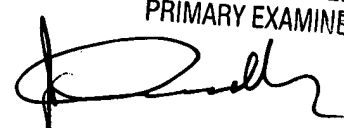
### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY  
PRIMARY EXAMINER

JEROME DONNELLY  
PRIMARY EXAMINER



### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 26 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 recites the limitation "the first portion of the cam" in line 7 and claim 45 recites the limitation "said moveable element" in line 15. There is insufficient antecedent basis for these limitations in their respective claims. Claim 26 should be amended in line 6 by deleting the phrase "to one portion" and inserting --to a first portion--, and Claim 45 should be amended in line 15 by deleting the phrase "said moveable element" and inserting --said treadbase-- to provide proper antecedent basis. The examiner will assume that these amendments will be made to expedite the prosecution.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 26, 29, 30-33 and 38-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Cutler et al. (6,761,667).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

2. As to claims 26, 29, 30-33 and 38-41, Cutler et al. disclose a treadmill comprising a support base (122), a treadbase (124) pivotally coupled to the support base, and a lift apparatus having a lift motor assembly (134) pivotally coupled on a first end to the support base, and pivotally coupled on an opposite end to a first portion (A) of a cam (138), a second portion (B) of the cam being pivotally linked to the support base, the first portion being positioned beneath the second portion of the cam when the treadbase is in a horizontal position, and an incline link bar (140) having a first end pivotally coupled to a third portion of the cam and a second end of the incline link bar being pivotally coupled to the treadbase wherein a force applied by said motor assembly to said cam results in a generally equivalent force applied to said incline link bar to raise said treadbase, the cam has three pivot locations, the cam is driven by said at least one lift motor assembly to selectively raise or lower the treadbase, the lift assembly comprises a motor, a drive screw and a sleeve, said second portion of the cam is attached to a torsion bar/cross beam that is pivotally coupled to the support base, the

Art Unit: 3764

torsion bar pivotally links the cam to the support base and the cam is attached to the torsion bar and the torsion bar is pivotally attached to the support base (see Fig. 9 below & col. 10, lines 54-62).

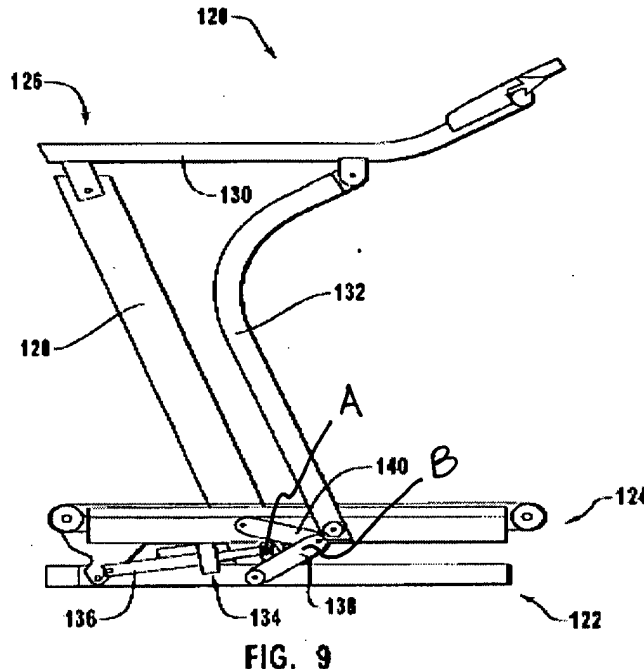


FIG. 9

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 34-37 and 42-50 are rejected under 35 U.S.C. 103(a) as being obvious over Cutler et al. '667.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

3. As to claim 28, Cutler et al. disclose a treadmill as described above (see discussion of claim 27). Cutler does not disclose a second lift motor assembly pivotally coupled on a first end to the support base and on an opposite end to a second cam being attached to said torsion bar. The Examiner takes Official Notice that the prior art includes treadmills having dual motors used to lift their treadbases. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine another motor and corresponding cam assembly to Cutler's treadmill such that it mirrors the first motor in being pivotally coupled to the support base and the treadbase so that

the sizes of both motors can be reduced while still providing enough power to lift the treadbase.

4. As to claims 34-37, 42 and 43, Cutler et al. disclose a treadmill as described above. Cutler does not disclose that the cam has a shape that includes corners. The examiner takes Official Notice that the prior art includes cams having an array of shapes including triangles and square with corners. Furthermore, the applicant has even disclosed that "each cam may be formed in a variety of different configurations". At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Cutler's "T" shaped cam (138 with extension connecting to motor assembly) with a cam having any of an array of shapes including that of a triangularly shaped cam to reduce the cost of manufacturing the cam since one solid triangle would presumably require less time to manufacture than a cam having two components secured together. Furthermore, a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Cutler also discloses that at a first corner of the cam wherein the cam pivots with the support base, a torsion bar/cross beam can be attached, a second corner of the cam is pivotally attached to the lift motor and a third corner of the cam is pivotally attached to the treadbase via an inclined link bar, and a force applied by the lift motor assembly to the cam results in a generally equivalent force applied to said incline link to raise the treadbase.

5. As to claims 44-49, Cutler et al. disclose a treadmill as described above (see discussion of claim 39). Cutler does not disclose a second lift motor assembly pivotally

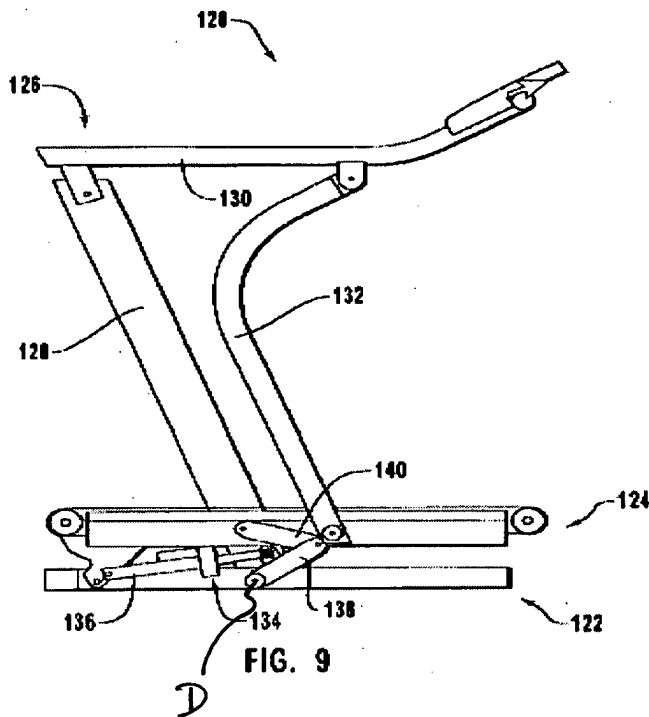
coupled on one end to the support base and on an opposite end to the treadbase. The Examiner takes Official Notice that the prior art includes treadmills having dual motors used to lift their treadbases. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine another motor to Cutler's treadmill such that it mirrors the first motor in being pivotally coupled to the support base and the treadbase so that the sizes of both motors can be reduced while still providing enough power to lift the treadbase. Cutler further discloses that said first lift motor would then be pivotally coupled to the first cam and the second lift motor would be pivotally coupled to the second cam, the torsion bar is pivotally coupled to the support base, the inclined bar is pivotally coupled on a first end to said first cam and pivotally coupled on a second end to said treadbase and the first and second lift assemblies are pivotally coupled to the support base.

6. As to claim 50, Cutler discloses a treadmill comprising a support base (122), a treadbase (124), and a lift apparatus having a motor pivotally coupled on a first end to the support base and pivotally coupled on a second end to one portion of a cam (138) and an incline link bar (140) having a first end pivotally coupled to a third portion of the cam and a second end pivotally coupled to the treadbase (see Fig. 9). Cutler does not disclose a support post or pivot element linking a second portion of the cam (D) to the support base (see Fig. 9 below). The examiner takes Official Notice that the prior art includes pins, posts and other structures that allow for one element to pivot thereon relative to another. At the time of the invention, it would have been obvious to a person



Art Unit: 3764

of ordinary skill in the art to provide Cutler with a pivot post or pin upon which the second portion of the cam may be stably and pivotally linked to the support base.



## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 18, 2008

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Tam M. Nguyen  
Examiner  
Art Unit 3764



JEROME DONNELLY  
PRIMARY EXAMINER